



**BURLINGTON
ENVIRONMENTAL**

September 18, 1992

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HAZARDOUS WASTE

Mr. Randall F. Smith
Chief, Waste Management Division
U. S. Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Re: Burlington Environmental Inc. Pier 91 Facility
EPA ID. No. WAD 000812917

Dear Mr. Smith:

I am writing on behalf of Burlington Environmental Inc. (Burlington) regarding the U.S. Environmental Protection Agency (EPA) determination to include the entire approximately 124 acre area of Piers 90 and 91 at the Port of Seattle (Port) in the definition of "facility" in the RCRA Part B Permit (Permit) issued to Burlington and the Port effective August 26, 1992. It is not the purpose of this letter to challenge the legal or regulatory basis for this determination, although Burlington has brought the issue to the Pollution Control Hearings Board on appeal of the Permit. The reason Burlington has appealed this issue is that the Permit fails to designate the Port as a Permittee. Burlington as the sole Permittee is solely liable for complying with the terms of the Permit, including the requirements for corrective action and closure of the "facility" as it is defined in the Permit.

Burlington seeks clarification from EPA and from the Washington State Department of Ecology (Ecology) regarding the nature and scope of Burlington's obligation with respect to the cleanup and/or closure of areas within this definition of facility which Burlington has never owned or otherwise controlled or leased and on which Burlington has never operated. To require that Burlington take responsibility for areas outside the boundaries of its RCRA permitted operations is an inequitable and absurd result of its status as a lessee of approximately 4 acres of property from the Port. If Burlington were the owner and operator of the 4 acre site, the facility definition for purposes of the Permit would be limited to the 4 acres.

Burlington has always cooperated with the EPA in the context of interim status RCRA corrective action activities related to its operations at the Pier 91 facility. It intends to continue these efforts in the context of the Part B. Based upon your letter of May 1, 1992 directed to Mr. David Aggerholm of the Port, it would appear that the EP^a



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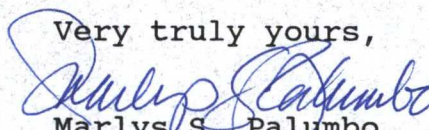
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intends to hold the Port responsible for investigating and cleaning up property contiguous to Burlington's operations which is under the ownership and control of the Port. If this is the case, we are assuming that the Port will be named a Permittee under the Permit, at least with respect to all requirements for corrective action and/or closure of areas outside the boundaries of Burlington's RCRA operations unless it is established that Burlington operations contributed to any environmental problems beyond the boundaries of its leased premises.

The Permit as issued is a state-only permit because corrective action requirements have not yet been included. We are requesting clarification from EPA regarding how it intends to incorporate corrective action requirements into the Permit which will encompass the areas (beyond the boundaries of Burlington's leased premises) EPA has determined to be within the definition of "facility". This clarification will enable Burlington to resolve this issue in the context of the appeal before the Pollution Control Hearings Board.

Please let me know if you have any questions regarding this request for clarification. We would be pleased to meet with you to discuss this matter. You can reach me or John Stiller, regulatory affairs manager for the facility, at (206) 223-0500.

Very truly yours,


Marlys S. Palumbo
Consulting Attorney

cc: D. Stefani
J. Stiller
M. Brandeberry
M. Keller

